

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2,  
DIVISION 33, OF THE SAN DIEGO MUNICIPAL CODE  
BY AMENDING SECTIONS 22.3302, 22.3303, 22.3304,  
22.3305, 22.3306, 22.3308, AND 22.3309; AND ADDING  
SECTION 22.3310; ALL RELATING TO DESIGN-BUILD  
CONTRACTS.

WHEREAS, the Federal Government has successfully used a Multiple Award  
Construction Contract (MACC) process to implement large construction programs; and

WHEREAS, implementing a multiple award design-build process based on the federal  
MACC process will shorten project schedules and save costs, particularly for large capital  
programs such as water and sewer improvements; and

WHEREAS, on January 26, 2010, the City Council determined in Ordinance No. O-  
19922 that implementing a small and local business program enhances diversity in local  
contracts, increases competition, and stimulates the local economy while ensuring that the City is  
not an active or passive participant in marketplace discrimination; and

WHEREAS, the City Council affirms the purposes of the small and local business  
program described in Ordinance No. O-19922, and further finds that small and local businesses  
can benefit public works projects through their knowledge of San Diego's environmental  
resources and habitat, local supplies, geological and subsurface conditions, weather and traffic  
patterns; and

WHEREAS, if small and local businesses are successful they will grow and bid on City  
public works projects in the future, resulting in increased competition and lower prices; and

WHEREAS, mandatory participation of small and local businesses in the multiple award  
design-build process will further advance these purposes; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, Division 33, of the San Diego Municipal Code is amended by amending Sections 22.3302, 22.3303, 22.3304, 22.3305, 22.3306, 22.3308, 22.3309, and adding Section 22.3310, to read as follows:

**Division 33: Design-Build Contracts**

**§22.3301 Purpose and Intent**

[No change in text.]

**§22.3302 Definitions**

All defined terms in this Division appear in italics. For the purposes of this Division, the following definitions apply:

*Design-build* means a public works contract procurement method in which both the design and construction of a project are procured from a single entity.

*Design-build entity* means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services on a public works project.

*Design-build entity member* includes any person who provides licensed contracting, architectural, or engineering services.

**§22.3303 Design-Build Procurement**

- (a) For purposes of this Division only, prior to procuring a *design-build public works contract*, the City shall prepare a request for proposal or invitation to bid setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the

buildings and site, and performance specifications. The performance specifications shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the City's needs. The performance specifications shall be prepared by a design professional designated by the City. Nothing in this Division precludes a *design-build* contract from being awarded without competition pursuant to Section 22.3108.

- (b) Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the development of criteria or preparation of the request for proposals or invitation to bid shall not be eligible to participate in the competition with any *design-build entity*.

**§22.3304 Competitive Prequalification and Selection Process**

The City may issue a request for qualifications to establish a competitive prequalification and selection process to determine which *design-build entities* are the most qualified and eligible to respond to a request for *design-build* proposals or invitation to bid.

**§22.3305 Prequalification Criteria**

The City may consider all or any combination of the following criteria in prequalifying *design-build entities*:

- (a) Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.
- (b) Submission of documentation establishing that the *design-build entity members* have completed, or demonstrated the capability to complete,

projects of similar size, scope, building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

- (c) Submission of a proposed project management plan establishing that the *design-build entity* has the experience, competence, and capacity needed to effectively complete the project.
- (d) Submission of evidence establishing that the *design-build entity* has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the City that the *design-build entity* has the capacity to complete the project.
- (e) Provision of a declaration that the applying members of the *design-build entity* have not had a surety company finish work on any project within the past five years.
- (f) Provision of a declaration providing detail for the past five years concerning all of the following:
  - (1) Civil or criminal violations of the Occupational Safety and Health Act against any member of the *design-build entity*.
  - (2) Civil or criminal violations of the Contractors' State License Law against any member of the *design-build entity*.
  - (3) Any conviction of any member of the *design-build entity* of submitting a false or fraudulent claim to a public agency.

- (4) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements against any member of the *design-build entity*. For purposes of Section 22.3305(f)(4), only violations by a *design-build entity member*, as an employer shall be deemed applicable, unless it is shown that the *design-build entity member*, in his or her capacity as an employer, had knowledge of a subcontractor's violations or failed to comply with the conditions set forth in Section 1775(b) of the ~~State~~ California Labor Code.
- (5) Civil or criminal violations of federal or state law against any *design-build entity member* governing equal opportunity employment, contracting, or subcontracting.
- (g) Provision of a declaration that the *design-build entity* will comply with all other provisions of law applicable to the project. The declaration shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge.

**§22.3306 Equal Employment Opportunity Outreach Program**

*Design-build entities* are "contractors" within the meaning of Chapter 2, Article 2, Division 27 of this Code, and shall comply with the City's equal employment

opportunity outreach program and any related requirements in the *design-build* contract.

**§22.3307 False Declaration Unlawful**

[ No change in text.]

**§22.3308 Selection Method**

The City shall select one of the following methods as the process to be used for the selection of the winning entity:

- (a) A *design-build* competition where award is made to the *design-build entity* whose proposal offers the best value to the City considering price and the evaluation criteria in the request for proposals.
  - (1) The City shall issue a request for proposals describing the project and any performance requirements and specifications the City deems necessary. The City may include preliminary designs and drawings detailing the requirements of the project.
  - (2) The request for proposals shall establish evaluation criteria and a methodology that the City will use to evaluate proposals. Criteria may include, but are not limited to, the experience of the *design-build entity* and key personnel, references, commitment to equal opportunity, proposed design approach, project cost, initial and/or life-cycle costs, project features, financing, quality, capacity, schedule, and operational and functional performance of the facility. However, any criteria and methods used to evaluate

proposals shall be limited to those contained in the request for  
*design-build* proposals.

- (b) A *design-build* competition based on program requirements and a detailed scope of work, including any preliminary design drawings and specifications set forth by the City in the invitation to bid.
  - (1) Award shall be made on the basis of the lowest responsible and reliable bid.
- (c) An emergency or sole source award of a *design-build* contract without competition pursuant to Section 22.3108.

**§22.3309 Work Listing**

The City recognizes that the *design-build entity* is charged with performing both design and construction. Because a *design-build* contract may be awarded prior to the completion of the design, it is often impracticable for the *design-build entity* to list all subcontractors at the time of the award.

- (a) It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this Division in a manner that retains protection for subcontractors while allowing *design-build* projects to be administered in an efficient fashion.
- (b) All of the following requirements shall apply to subcontractors, licensed by the state, that are employed on *design-build* projects undertaken pursuant to this Division.
  - (1) The *design-build entity* in each *design-build* proposal shall specify the construction trades or types of subcontractors that may be

named as members of the *design-build entity* at the time of award.

In selecting the trades that may be identified as members of the *design-build entity*, the *design-build entity* shall identify the trades deemed essential in the design considerations of the project. All subcontractors that are listed at the time of award shall be afforded the protection of all applicable laws.

- (2) All subcontracts that were not listed by the *design-build entity* at the time of award in accordance with Section 22.3309(b)(1) shall be performed and awarded by the *design-build entity*, in accordance with a bidding process set forth in the request for *design-build* proposals.

#### **§22.3310 Multiple Award Design-Build Contracts**

The City may award *design-build* contracts to more than one *design-build entity* in which the *design-build entities* compete for public works projects on a *task order* basis, under the following conditions:

- (a) The City issues a request for qualifications or proposals generally describing the types of public works projects anticipated to be performed under the multiple award *design-build* contracts, and the evaluation criteria to be used to determine which *design-build entities* will be awarded contracts.
- (b) The City Council approves the award of the multiple award *design-build* contracts.



- (c) Only the *design-build entities* awarded multiple award *design-build* contracts are eligible to compete for the public works projects submitted to them by the City, with the winning *design-build entity* determined in accordance with Section 22.3308. The winning *design-build entity* is awarded the public works project through the issuance of a *task order*.
- (d) Multiple award *design-build* contracts shall provide for a period of up to three years of competition for task orders. The contracts may continue for a period longer than three years only as necessary to complete outstanding *task orders*.
- (e) No contract may guarantee a *design-build entity* cumulative *task orders* in excess of \$50,000.
- (f) A *task order* may not exceed \$10,000,000 without City Council approval.
- (g) The cumulative amount of *task orders* issued to all *design-build entities* awarded contracts through each request for qualifications or proposals may not exceed \$100,000,000 without City Council approval.
- (h) Every request for proposals for a *task order* that the City estimates to cost over \$1,000,000 shall include mandatory minimum participation by Small Local Business Enterprises and/or Emerging Local Business Enterprises, as defined in Section 22.3603, at a level determined by the City Manager for each project. The City

Manager may also include mandatory minimum participation levels for Disabled Veteran Business Enterprises, and on *task orders* that the City estimates to cost \$1,000,000 or less, in his or her discretion.

- (1) Notwithstanding Sections 22.3609 and 22.3610, good faith efforts shall not satisfy the mandatory minimum participation required by this Section.
- (2) Any *design-build entity* awarded a *task order* who fails to achieve the required mandatory minimum participation level in the request for proposals shall be ineligible to compete for further *task orders* under that multiple award *design-build* contract.

Section 2. If any provision of this ordinance is declared legally invalid by a final judgment rendered in a court of competent jurisdiction, the provision declared invalid shall be deemed to be severable, and the remaining provisions of this ordinance shall continue in effect to the extent this ordinance can be reasonably interpreted and enforced without the invalid provision.

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Thomas C. Zeleny  
Deputy City Attorney

TCZ:mb  
02/13/12  
Or.Dept:Mayor  
Doc No:320564

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego,  
at its meeting of \_\_\_\_\_.

ELIZABETH S. MALAND, City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor